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§ 1425.20 [Reserved]

§ 1425.21 Records required.

(a) A CMA shall maintain records for each loan or LDP commodity showing the quantity:

(1) Received from each member and nonmember;

(2) Eligible for loans and LDP's;

(3) By quality factors specified in the applicable commodity regulations including class, grade, and quality, where applicable; and

(4) Of unprocessed inventory broken down by items 1 through 3 above.

(b) Except as provided in paragraph (c) of this section, inventory shall be allocated in the following manner until all inventory in a loan pool is depleted:

(1) For processed commodities, the pool's inventory shall be adjusted when the commodity is withdrawn from inventory for processing; and

(2) For commodities that are not processed, the pool's inventory shall be allocated to the pool and the pool's inventories adjusted when the commodity is shipped.

(c) Records of loan and non-loan pool dispositions do not have to be maintained separately when sales proceeds from pools are allocated according to the quantity and quality of commodity in the pools.

§ 1425.22 Inspection and investigation.

(a) The books, documents, papers, and records of the CMA and subsidiaries shall be maintained for five years after the applicable crop year and shall be available to CCC for inspection and examination at all reasonable times.

(b) At any time after an application is received, CCC shall have the right to examine all books, documents, papers, and determine whether the CMA is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles of association, and agreements with producers, the representations made by the CMA in its application for approval, and, where applicable, its agreements with CCC.

§ 1425.23 Reports.

(a) CMA's shall annually provide CCC a report of all commodity deliveries in-

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volved in loans and LDP's by FSA farm number for each member.

(b) When requested by CCC, CMA's shall report market gains received on behalf of each member.

§ 1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0560-0040.

§ 1425.25 Appeals.

A CMA may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title.

PART 1427—COTTON

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AUTHORITY: 7 U.S.C. 7231–7237; and 15 U.S.C. 714b and 714c.

Subpart A—Regulations for the Nonrecourse Cotton Loan and Loan Deficiency Payment Programs.

SOURCE: 61 FR 37601, July 18, 1996, unless otherwise noted.

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 1996 through 2002 crops of upland cotton and extra long staple cotton. These regulations set forth the terms and conditions under which the nonrecourse cotton loan program and the loan deficiency payment program shall be administered by the Commodity Credit Corporation (CCC). Additional terms and conditions shall be set forth in the note and security agreement and loan deficiency payment application which must be executed by a producer to receive loans and loan deficiency payments.

(b) The basic loan rates, the schedule of premiums and discounts, and forms applicable to the nonrecourse cotton loan and loan deficiency payment programs are available in State and county Farm Service Agency (FSA) offices (State and county offices, respectively). The forms for use in connection with the programs in this subpart shall be prescribed by CCC.

(c) Loans and loan deficiency payments shall not be available for any cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.2 Administration.

(a) The nonrecourse loan and loan deficiency payment programs which are applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC, (Administrator, FSA), or a designee and shall be carried out by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the cotton loan and loan deficiency payment programs or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other program requirements does not adversely affect the operation of the nonrecourse cotton loan or loan deficiency payment programs.

(f) A representative of CCC may execute loan note and security agreements and loan deficiency payment applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, is null and void.

§ 1427.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration regarding the cotton loan and loan deficiency payment programs. The terms defined in parts 718 of this title and 1412 of this chapter shall also be applicable.

Approved cooperative marketing association (CMA) means a cooperative marketing association approved in accordance with part 1425 of this chapter which has executed Form CCC-Cotton

G, Cotton Cooperative Loan Agreement.

Charges means all fees, costs, and expenses incurred by CCC in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

Cotton means upland cotton and extra loan staple cotton meeting the definition set forth in the definitions of "upland cotton" and "extra long staple (ELS) cotton" in this section, respectively, and excludes cotton not meeting such definitions.

Extra long staple (ELS) cotton means any of the following varieties of cotton which is produced in the United States and is ginned on a roller gin:

- (1) American-Pima;
- (2) Sea Island;
- (3) Sealand;
- (4) All other varieties of the Barbados species of cotton, and any hybrid thereof; and
- (5) Any other variety of cotton in which one or more of these varieties predominate.

Financial institution means:

- (1) A bank in the United States which accepts demand deposits; and
- (2) An association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Form A loans means a nonrecourse loan executed on Form CCC—Cotton A, Cotton Producer's Note and Security Agreement.

Form G loans means a nonrecourse loan to a CMA on eligible cotton delivered to the CMA by eligible members of the CMA.

Loan servicing agent means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The loan servicing agent may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

(1) Preparing and executing loan and loan deficiency payment documents;

(2) Disbursing loan and loan deficiency payment proceeds;

(3) Handling reconcentration of cotton in accordance with § 1427.16;

(4) Accepting loan repayments;

(5) Handling documents involved with forfeiture of loan collateral to CCC; and

(6) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes.

Lint cotton means cotton which has passed through the ginning process.

Seed cotton means cotton which has not passed through the ginning process.

Servicing agent bank means the bank designated as the financial institution for a CMA or loan servicing agent.

Upland cotton means planted and stub cotton which is produced in the United States from other than pure strain varieties of the Barbados species, any hybrid thereof, or any other variety of cotton which one or more of these varieties predominate.

Warehouse receipt means a receipt issued with respect to a bale of cotton by a warehouse with an existing cotton storage agreement, approved by CCC, in accordance with §§ 1427.1081 through 1427.1089, that is:

(1) A negotiable, machine card type warehouse receipt that is pre-numbered and pre-punched;

(2) An electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations which are approved by FSA or CCC to operate such system; or

(3) Other such acceptable evidence of title, as determined by CCC.

§ 1427.4 Eligible producer.

(a) An eligible producer of a crop of cotton shall be a person (i.e., an individual, partnership, association, corporation, CMA, estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop of cotton as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12 and 718 of this title, and parts 1405 and 1412 of this chapter.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans and loan deficiency payments only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable loan or loan deficiency payment documents are signed by the guardian;

(3) Any note and security agreement or loan deficiency payment application signed by the minor is co-signed by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) Two or more producers may obtain a single joint loan or loan deficiency payment with respect to the eligible cotton if the cotton is jointly owned by such producers. The cotton in a bale may have been produced by two or more eligible producers on one or more farms if the bale is not a repacked bale.

(e) Loans may be made to a warehouse operator who, in the capacity of

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a producer, tenders to CCC warehouse receipts issued by such warehouse operator on cotton produced by such warehouse operator only in those States where the issuance and pledge of such warehouse receipts are valid under State law.

(f) A CMA may obtain loans and loan deficiency payments on eligible cotton on behalf of their members who are eligible to receive loans or loan deficiency payments with respect to a crop of cotton. For purposes of this subpart, the term “producer” includes a CMA.

§ 1427.5 General eligibility requirements.

(a) To receive loans or loan deficiency payments for a crop of cotton, a producer must execute a note and security agreement or loan deficiency payment application on or before May 31 of the year following the year in which such crop is normally harvested.

(1) Form A loan documents or loan deficiency payment applications must be signed by the producer and mailed or delivered to applicable county office or loan servicing agent within 15 calendar days after the producer signs such documents and within the period of loan availability. A producer, except for a CMA, must request loans and loan deficiency payments:

(i) At the county office which, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced; or

(ii) From a loan servicing agent.

(2) Form G loan documents and requests for loan deficiency payments by a CMA must be signed by the CMA and delivered to CCC or the servicing agent bank within the period of loan availability.

(b) For a bale of cotton to be eligible for a loan or loan deficiency payment, the bale must:

(1) Be tendered to CCC by an eligible producer;

(2) Be in existence and good condition, be covered by fire insurance, be stored in a warehouse with an existing cotton storage agreement in accordance with §§ 1427.1081 through 1427.1089 at the time of disbursement of the loan or loan deficiency payment proceeds, except as provided in § 1427.23(f), and be

stored in approved storage as determined in accordance with § 1427.10;

(3) Be represented by a warehouse receipt meeting the requirements of § 1427.11, except as provided in § 1427.23(a)(4);

(4) Not be false-packed, water-packed, mixed-packed, re-ginned, or re-packed;

(5) Not be compressed to universal density at a warehouse where side pressure has been applied;

(6) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a loan or to obtain a loan deficiency payment;

(7) Not have been previously sold and repurchased or pledged as collateral for a CCC loan and redeemed except as provided in § 1427.172(b)(4);

(8) Not be cotton for which a loan deficiency payment has been previously made;

(9) Weigh at least 325 pounds net weight;

(10) Be packaged in materials which meet the specifications adopted by the Joint Cotton Industry Bale Packaging Committee sponsored by the National Cotton Council of America for the applicable crop year or which are identified and approved by the Joint Cotton Industry Bale Packaging Committee as experimental packaging materials for the applicable crop year.

(i) Copies of the applicable crop year specifications for cotton bale packaging materials published by the Joint Cotton Industry Bale Packaging Committee are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Copies may be inspected at the South Agriculture Building, room 4089 A, 1400 Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday.

(ii) Information with respect to experimental packaging material may be obtained from the Joint Cotton Industry Bale Packaging Committee.

(11) Be ginned by a ginner:

(i) Who has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag or otherwise furnish warehouse operator the tare weight; and

(ii) Who has entered into CCC-809, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(10) and;

(12) Be production from acreage that has been reported timely in accordance with part 718 of this title.

(c) In addition to the requirements of paragraph (b), for ELS cotton the bale must:

(1) Be a Grade and staple length specified in the schedule of loan rates for ELS cotton;

(2) Not have a micronaire reading of 2.6 or less; and

(3) Not have noted on the classing record the presence of spindle twist, preparation, grass, oil, and/or other extraneous matter.

(d) In addition to the requirements of paragraph (b), for upland cotton the bale must:

(1) Have been produced on a farm with a production flexibility contract in accordance with part 1412 of this chapter;

(2) Have been graded by using a High Volume Instrument;

(3) Be a grade, staple length, and leaf specified in the schedule of premiums and discounts for grade, staple, and leaf for upland cotton;

(4) Have a strength reading greater than 18 grams per tex, rounded to whole grams;

(5) Have a micronaire specified in the schedule of micronaire premiums and discounts for upland cotton;

(6) Have an extraneous matter specified in the schedule of discounts for extraneous matter for upland cotton; and

(e)(1) To be eligible to receive loans or loan deficiency payments, a producer must have the beneficial interest in the cotton which is tendered to CCC for a loan or loan deficiency payment. The producer must always have had the beneficial interest in the cotton unless, before the cotton was harvested, the producer and a former producer whom the producer tendering the cotton to CCC has succeeded had such

an interest in the cotton. Cotton obtained by gift or purchase shall not be eligible to be tendered to CCC for loans or loan deficiency payments. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan shall be eligible for loans whether succession to the cotton occurs before or after harvest as long as the heir otherwise complies with the provisions of this part.

(2) A producer shall not be considered to have divested the beneficial interest in the cotton if the producer retains control, title, and risk of loss in the cotton, including the right to make all decisions regarding the tender of the cotton to CCC for loans or loan deficiency payments and does any or all of the following:

(i) Executes an option to purchase whether or not a payment is made by the potential buyer for such option to purchase with respect to such cotton if all other eligibility requirements are met and the option to purchase contains the following provision:

Notwithstanding any other provision of this option to purchase, title; risk of loss; and beneficial interest in the commodity, as specified in 7 CFR part 1427, shall remain with the producer until the buyer exercises this option to purchase the commodity. This option to purchase shall expire, notwithstanding any action or inaction by either the producer or the buyer, at the earlier of: (1) The maturity of any Commodity Credit Corporation loan which is secured by such commodity; (2) the date the Commodity Credit Corporation claims title to such commodity; or (3) such other date as provided in this option.

(ii) Enters into a contract to sell the cotton if the producer retains title, risk of loss, and beneficial interest in the commodity and the purchaser does not pay to the producer any advance payment amount to enter into such contract, except as provided in part 1425 of this chapter; or

(iii) Executes Form CCC-605, Designation of Agent. Such designation:

(A) Allows the producer to authorize an agent or subsequent agent to redeem all or a portion of the cotton pledged as collateral for a loan;

(B) Identifies the warehouse receipts for which the authorization is given;

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(C) Expires upon maturity of the loan;

(D) Allows agents so designated by the producer to designate a subsequent agent by endorsement of the form by the agent;

(E) Must be presented at the time the loan is repaid at the county office or loan servicing agent where the loan originated if the agent or subsequent agent exercises any authority granted by the producer; and

(F) May be canceled by the producer by providing the custodial office a written request signed and dated by the producer showing the name of the agent, the loan number, and the bales applicable to the Form CCC-605. The effective date of the cancellation shall be the date the request is received by the custodial office.

(3) If loans or loan deficiency payments are made available to producers through a CMA, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the CMA or its member cooperative, except as otherwise provided in this section. Cotton delivered to such a CMA shall not be eligible to receive a loan or a loan deficiency payment if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in part 1425 of this chapter.

(f) If the person tendering cotton for a loan or a loan deficiency payment is a landowner, landlord, tenant, or sharecropper, such cotton must represent such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper.

(g) Each bale of upland cotton sampled by the warehouse operator upon initial receipt which has not been sampled by the ginner must not show more than one sample hole on each side of the bale. If more than one sample is desired when the bale is received by the warehouse operator, the sample shall be cut across the width of the bale, broken in half or split lengthwise, and otherwise drawn in accordance with AMS dimension and weight requirements. This requirement will not pro-

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hibit sampling of the cotton at a later date if authorized by the producer.

[61 FR 37601, July 18, 1996, as amended at 62 FR 19023, Apr. 18, 1997]

§ 1427.6 Disbursement of loans.

(a) Disbursement of loans to individual producers may be made by:

(1) County offices;

(2) Loan servicing agent; or

(3) An approved cotton clerk who has entered into a written agreement with CCC on Form CCC-810.

(b) Loan proceeds may be disbursed by CCC or a servicing bank agent bank to CMA's.

(c) The loan documents shall not be presented for disbursement unless the cotton covered by the mortgage or pledged as security is eligible in accordance with § 1427.5. If the cotton was not eligible cotton at the time of disbursement, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.7 Maturity of loans.

(a)(1) Form A loans and Form G loans mature on demand by CCC and no later than the last day of the 10th calendar month from the first day of the month in which the loan or loan advance is disbursed.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 30 days in advance of the accelerated maturity date.

(b) If the loan is not repaid by the loan maturity date, title to the cotton shall vest in CCC the day after such maturity date and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan, plus interest and charges.

§ 1427.8 Amount of loan.

(a) The loan rates for crops of upland cotton and ELS cotton will be determined and announced by CCC and made available at State and county offices.

(b) The quantity of cotton which may be pledged as collateral for a loan shall be the net weight of the eligible cotton as shown on the warehouse receipt issued by an approved warehouse, except that in the case of a bale which has a net weight of more than 600

pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted by CCC.

(c) The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (b) by the applicable loan rate.

(d) CCC will not increase the amount of the loan made with respect to any bale of cotton as a result of a redetermination of the quantity or quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made with respect to the weight of the bale or the classification for the bale, such error may be corrected.

§ 1427.9 Classification of cotton.

(a) References made to "classification" in this subpart shall include grade, staple length, and micronaire, and for upland cotton, leaf, extraneous matter, and strength readings. All cotton tendered for loan must be classed by an Agricultural Marketing Service (AMS) Cotton Classing Office (Cotton Classing Office) or other entity approved by CCC and tendered on the basis of such classification.

(b) An AMS cotton classification or other entity's classification acceptable by CCC showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples under the Smith-Doxey program.

(c) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse shall sample such cotton and forward the samples to the Cotton Classing Office or other entity approved by CCC serving the district in which the cotton is located. Such warehouse must be licensed by AMS or be approved by CCC to draw samples for submission to the Cotton Classing Office or other entity approved by CCC.

(d) If a sample has been submitted for classification, another sample shall not be drawn, except for a review classification.

(e) Where review classification is not involved, if through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value.

(f) If a review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

§ 1427.10 Approved storage.

(a) Eligible cotton may be pledged as collateral for loans only if stored at warehouses approved by CCC.

(1) Persons desiring approval of their facilities should communicate with the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205.

(2) The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices.

(b) When the operator of a warehouse receives notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, promptly place such cotton within such warehouse.

(c) Warehouse charges paid by a producer will not be refunded by CCC.

(d) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1427.23.

§ 1427.11 Warehouse receipts.

(a) Producers may obtain loans on eligible cotton represented by warehouse receipts only if the warehouse receipts meet the definition of a warehouse receipt and provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt or are otherwise acceptable to CCC. The warehouse receipt must:

(1) Contain the gin bale number;

(2) Contain the warehouse receipt number;

(3) Be dated on or prior to the date the producer signs the note and security agreement.

(b) Warehouse receipts, in accordance with § 1427.3, when issued as block

warehouse receipts will be accepted when authorized by CCC only if the owner of the warehouse issuing the block warehouse receipt owns the cotton represented by the block warehouse receipt and the warehouse is not licensed under the U.S. Warehouse Act.

(c)(1) Each receipt must set out in its written or printed terms the tare and the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if:

(i) The gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC; and

(ii) Gin weights are permitted by the licensing authority for the warehouse.

(2) The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A machine card type warehouse receipt reflecting an alteration in gross, tare, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight,
(Name of warehouse),
By (Signature or initials),
Date.

(3) Alterations in other inserted data on a machine card type warehouse receipt must be initialed by an authorized representative of the warehouse.

(d) If warehouse storage charges have been paid, the receipt must show that date through which the storage charges have been paid.

(e) If warehouse receiving charges have been paid or waived, the warehouse receipt must show such fact. Except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied

with ties which cannot be reused, the warehouse receipt must indicate the receiving charges and include a charge for new set of ties. If the bale is stored at a warehouse not having compress facilities and bales shipped from the warehouse are normally compressed in transit, the warehouse receipt must show the bale ties are not suitable for reuse when the bale is compressed and charges will be assessed by the nearest compress in line of transit for furnishing new bale ties.

(f) In any case where loan collateral is forfeited, any unpaid storage or receiving charges will be paid to the warehouse by CCC after loan maturity or as soon as practicable after the cotton is ordered shipped by CCC.

(g) The warehouse receipt must show the compression status of the bale; i.e., flat, modified flat, standard, gin standard, standard density (short), gin universal, universal density (short), or warehouse universal density. The receipt must show if the compression charge has been paid, or if the warehouse claims no lien for such compression.

[61 FR 37601, July 18, 1996, as amended at 62 FR 19023, Apr. 18, 1997]

§ 1427.12 Liens.

If there are any liens or encumbrances on the cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained before disbursement even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

§ 1427.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to a loan servicing agent, at a rate determined by CCC. Any such fee shall be in addition to any cotton clerk fee paid to a cotton clerk in accordance with paragraph (b) of this section. The amount of such fees is available in State and county offices and are shown on the note and security agreement and shall be deducted from the loan proceeds.

(b) Cotton clerks may only charge fees for the preparation of loan or loan

deficiency payment documents at the rate determined by CCC.

(1) Such fees may be deducted from the loan or loan deficiency payment proceeds instead of the fees being paid in cash.

(2) The amount of such fees is available in State and county offices and is shown on the note and security agreement.

(c) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter. All or a portion of such interest may be waived with respect to a quantity of upland cotton which has been redeemed in accordance with §1427.19 at a level which is less than the principal amount of the loan plus charges and interest.

(d) For each crop of upland cotton, the producer, as defined in the Cotton Research and Promotion Act (7 U.S.C. Chapter 2101), shall remit to CCC an assessment which shall be transmitted by CCC to the Cotton Board and shall be deducted from the:

(1) Loan proceeds for a crop of cotton and shall be at a rate equal to one dollar per bale plus up to one percent of the loan amount; and

(2) Loan deficiency payment proceeds for a crop of cotton and shall be at a rate equal to up to one percent of the loan deficiency payment amount.

(e) If the producers elects to forfeit the loan collateral to CCC, the producer shall pay to CCC, at the rates that are specified in the storage agreement between the warehouse and CCC, the following accrued warehouse charges:

(1) All warehouse storage charges associated with the forfeited cotton that accrued before the period the cotton was pledged as collateral for the loan; and

(2) Any accrued warehouse receiving charges associated with the forfeited cotton, including, if applicable, charges for new ties as specified in §1427.11.

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§ 1427.15 Special procedure where funds are advanced.

(a) This special procedure is provided to assist persons or firms which, in the course of their regular business of han-

dling cotton for producers, have made advances to eligible producers on eligible cotton to be placed under loan or to receive a loan deficiency payment. A person, firm, or financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) This special procedure shall apply only:

(1) If such person or firm is entitled to reimbursement from the proceeds of the loans or loan deficiency payments for the amounts advanced and has been authorized by the producer to deliver the loan or loan deficiency payment documents to a county office for disbursement of the loans or loan deficiency payments; and

(2) To loan or loan deficiency payment documents covering cotton on which a person or firm has advanced to the producers, including payments to prior lienholders and other creditors, the note amounts shown on the Form A loan, except for:

(i) Authorized cotton clerk fees;

(ii) The research and promotion fee to be collected for transmission to the Cotton Board by CCC; and

(iii) CCC loan service charges.

(c)(1) All loan or loan deficiency payment documents shall be mailed or delivered to the appropriate county office and shall show the entire proceeds of the loans or loan deficiency payments, except for CCC loan service charges and research and promotion fees, for disbursement to:

(i) The financial institution which is to allow credit to the person or firm which made the loan or loan deficiency payment advances or to such financial institution and such person or firm as joint payees; or

(ii) The person, firm, or financial institution which made the loan or loan deficiency payment advances to the producers.

(2) The documents shall be accompanied by Form CCC-825, Transmittal Schedule of Loan and Loan Deficiency Payment Documents, in original and two copies, numbered serially for each county office by the person, firm, or financial institution which made the loan or loan deficiency payment advance. The Form CCC-825 shall show

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the amounts invested by the person, firm, or financial institution in the loans or loan deficiency payments.

(3) Upon receipt of the loan or loan deficiency payment documents and Form CCC-825, the county office will stamp one copy of the Form CCC-825 to indicate receipt of the documents and return this copy to the person, firm, or financial institution.

(d) County offices will review the loan or loan deficiency payment documents prior to disbursement and will return to the person, firm, or financial institution any documents determined not to be acceptable because of errors or illegibility. County offices will disburse the loans or loan deficiency payments for which loan or loan deficiency payment documents are acceptable by issuance of one check to the payee indicated on the applicable form and will mail the check to the address shown for such payee on the applicable form with a copy of Form CCC-825. The Form CCC-825 will show the date of disbursement by a county office and amount of interest earned by the person, firm, or financial institution.

(e) The person, firm, or financial institution shall be deemed to have invested funds in the loans or loan deficiency payment as of the date loan or loan deficiency payment documents acceptable to CCC were delivered to a county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in a county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(f) Interest will be computed on the total amount invested by the person, firm, or financial institution in the loan or loan deficiency payment represented by accepted documents from and including the date of investment of funds by the person, firm, or financial institution to, but not including, the date of disbursement by a county office.

(1) Interest will be paid at the rate in effect for CCC loans as provided in part 1405 of this chapter.

(2) Interest earned by the person, firm, or financial institution on the investment in loans disbursed during a

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month will be paid by county offices after the end of the month.

§ 1427.16 Reconcentration of cotton.

(a) CCC may under certain conditions, before loan maturity, compress, store, insure, or reinsure the cotton against any risk, or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the producer or CCC.

(b) CCC may reconcentrate the cotton pledged for the loan from one CCC-approved warehouse to another with the written consent of the producer and upon the request of the local warehouse and certification that there is congestion and lack of storage facilities in the area. However, if CCC determines such loan cotton is improperly warehoused and subject to damage, or if any of the terms of the loan agreement are violated, or if carrying charges are substantially in excess of the average of carrying charges available elsewhere and the local warehouse, after notice, declines to reduce such charges, such written consent need not be obtained.

(1) The county office, loan servicing agent, or CMA shall arrange for reconcentration of the cotton under the direction of the Kansas City Commodity Office.

(2) Any fees, costs, or expenses incident to such actions shall be charges against the cotton.

(3) After the cotton is reconcentrated, the Kansas City Commodity Office shall obtain new warehouse receipts, allocate to individual bales, shipping and other charges incurred against the cotton, and return new warehouse receipts and reconcentration charges applicable to each bale to the county office, loan servicing agent, or CMA. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loan.

§ 1427.17 Custodial offices.

Forms CCC-Cotton A and CCC-Cotton A-1, collateral warehouse receipts and related documents will be maintained in the custody of CCC, the county office, the loan servicing agent, or the

servicing agent bank, whichever disbursed the loan evidenced by such documents.

§ 1427.18 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan, or disposes of or moves the loan collateral without the prior written approval of CCC, such loan or loan deficiency payment shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan or loan deficiency payment;

(ii) Any additional amounts paid by CCC with respect to the loan or loan deficiency payment;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts;

(v) Liquidated damages in accordance with paragraph (e); and

(vi) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of cotton with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1427.19.

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral delivered to or acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan or

loan deficiency payment is less than the amount required in accordance with this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement or loan deficiency payment application with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement or loan deficiency payment application and the regulations set forth in this subpart. Each such producer shall also remain liable for repayment of the entire loan or loan deficiency payment amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan or for which the loan deficiency payment was made. In addition, such producer may not amend the note and security agreement or loan deficiency payment application with respect to the producer's claimed share in such cotton after execution of the note and security agreement or loan deficiency payment application by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or loan deficiency payment or in maintaining or settling a loan or disposing of or moving the loan collateral without the prior written approval of CCC. Accordingly, if CCC determines that the producer has violated the terms or conditions of Form CCC-Cotton A, Form CCC-Cotton AA, or Form CCC-709, as applicable, liquidated damages shall be assessed on the quantity of the cotton which is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

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(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(f) For first and second offenses, if CCC determines that a producer acted in good faith when the violation occurred, CCC shall:

(1) Require repayment of the loan principal and charges, plus interest applicable to the loan quantity affected by the violation or for loan deficiency payment, the loan deficiency payment amount applicable to the loan deficiency quantity involved with the violation, and charges plus interest from the date the loan deficiency payment was made; and

(2) Assess liquidated damages in accordance with paragraph (e);

(3) If the producer fails to pay such amounts within 30 calendar days from the date of notification, CCC shall call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(g) For cases other than first or second offenses, or any offense for which CCC cannot determine good faith when the violation occurred, CCC shall:

(1) Assess liquidated damages in accordance with paragraph (e); and

(2) Call the applicable loan involved in the violation and require repayment of any market gain previously realized for the applicable loan, plus any interest previously waived and any storage paid by CCC, and with respect to a loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest from the date the loan deficiency payment was made.

(h) If the county committee acting on behalf of CCC determines that the

producer has committed a violation in accordance with paragraph (e), the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the county committee; and

(2) Administrative actions will be taken in accordance with paragraph (f) or (g).

(i) If the loan is called in accordance with this section, the producer must repay the loan at principal and charges, plus interest and may not repay the loan at the lower of the loan repayment rate in accordance with § 1427.19 or utilize the provisions of part 1401 of this chapter with respect to such loan.

(j) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (e) may be waived as determined by CCC.

§ 1427.19 Repayment of loans.

(a) Warehouse receipts will not be released except as provided in this section.

(b) A producer or agent or subsequent agent authorized on Form CCC-605 may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined in accordance with this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton.

(c) A producer or agent or subsequent agent authorized on Form CCC-605, may repay the loan amount for one or more bales of cotton pledged as collateral for a loan:

(1) For upland cotton, at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for such bales; or

(ii) The adjusted world price, as determined by CCC in accordance with § 1427.25, in effect on the day the repayment is received by the county office, loan servicing agent, or servicing agent bank that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

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(d) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(e) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to part 1400 of this chapter.

(f) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

(g) Notwithstanding any other provision of this section, CCC will not accept repayment of upland cotton at a rate based on the adjusted world price beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e). In the event that Thursday is a non-workday, such loan repayments will not be accepted beginning at 7 a.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with § 1427.25(e).

(h) If the upland cotton pledged as collateral is eligible to be repaid at a rate less than the loan level and charges, plus interest, and the adjusted world price determined in accordance with § 1427.25 is:

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC-605 the warehouse storage charges which have accrued, with respect to the cotton pledged as collateral for such loan, during the period the cotton was pledged for loan;

(2) Above the national average loan rate by less than the sum of the accrued interest and warehouse storage charges, that accrued during the period the cotton was pledged for loan, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC-605 that portion of the warehouse storage charges, that accrued during the period the cotton was pledged for loan, that are determined to be necessary to permit the loan to be repaid at the adjusted world price without regard to

any warehouse charges that accrued before the cotton was pledged for loan; or

(3) Above the national average loan rate by as much as or more than the sum of the accrued interest and warehouse storage charges that accrued during the period the cotton was pledged for loan, CCC shall not pay any of the accrued warehouse storage charges.

§ 1427.20 Handling payments and collections not exceeding \$9.99.

To avoid the administrative costs of making small payments and handling small accounts, amounts of \$9.99 or less will be paid to the producer only upon the producer's request. Deficiencies of \$9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1427.21 Settlement.

(a) The settlement of loans shall be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC.

(b) Settlements made by CCC with respect to eligible cotton which are acquired by CCC which are stored in an approved warehouse shall be made on the basis of the entries set forth on the applicable warehouse receipt and other accompanying documents.

(c) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall take title to the cotton in accordance with § 1427.7(b).

§ 1427.22 Death, incompetency, or disappearance.

In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any proceeds in settlement of a loan or loan deficiency payment, payment shall, upon proper application to the county office or loan servicing agent which disbursed the loan or loan deficiency payment, be made to the person or persons who would be entitled to such producer's payment as provided in the regulations entitled Payment Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, part 707 of this title.

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§ 1427.23 Cotton loan deficiency payments.

(a) Producers may obtain loan deficiency payments for 1996 through 2002 crops of upland cotton in accordance with this section.

(b) In order to be eligible to receive such loan deficiency payments, the producer of the upland cotton must:

(1) Comply with all of the upland cotton loan eligibility requirements in accordance with this subpart;

(2) Agree to forgo obtaining such loans;

(3) File a request for payment for a quantity of eligible cotton in accordance with §1427.5(a) on Form CCC-Cotton AA, Form CCC-709, or other form approved by CCC;

(4) Provide warehouse receipts or, as determined by CCC, a list of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin;

(5) Provide classing information for such quantity in accordance with §1427.9; and

(6) Otherwise comply with all program requirements.

(c) The loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined in accordance with paragraph (d) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a loan.

(d) The loan deficiency payment rate for a crop of upland cotton shall be the amount by which the loan rate determined for a bale of such crop exceeds the adjusted world price, as determined by CCC in accordance with §1427.25, in effect on the day the request is received by the county office, loan servicing agent, or servicing agent bank.

(e) The total amount of any loan deficiency payments that a person may receive is subject to part 1400 of this chapter.

(f) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible upland cotton, and the producer has the beneficial interest in such quantity as specified in accordance with §1427.5(c) on the date the cotton was ginned, the loan deficiency payment rate applicable to such cotton will be

the loan deficiency payment rate based on the date the cotton was ginned. In such cases, the producer must meet all the other requirements in paragraph (b) on or before the final date to apply for a loan deficiency payment in accordance with §1427.5.

(g) Notwithstanding any other provision of this section, CCC will not accept applications for loan deficiency payments that specify the payment rate beginning at 4 p.m. eastern time each Thursday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with §1427.25(e). In the event that Thursday is a non-workday, such applications for loan deficiency payments will not be accepted beginning at 7 a.m. eastern time the next workday until an announcement of the adjusted world price for the succeeding weekly period has been made in accordance with §1427.25(e).

§ 1427.24 [Reserved]

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

(a) The prevailing world market price for upland cotton shall be determined by CCC as follows:

(1) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M $1\frac{3}{32}$ inch) cotton C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward shipment price) are available for growths quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following: Beginning with the first week

covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe (Northern Europe current price) and the average of the forward shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe (Northern Europe forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and the Northern Europe forward price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

(i) Weeks 1 and 2: $(2 \times \text{Northern Europe current price}) + \text{Northern Europe forward price}/3$.

(ii) Weeks 3 and 4: $\text{Northern Europe current price} + \text{Northern Europe forward price}/2$.

(iii) Weeks 5 and 6: $\text{Northern Europe current price} + (2 \times \text{Northern Europe forward price})/3$.

(iv) Week 7 through July 31: Northern Europe forward price.

(3) The prevailing world market price for upland cotton as determined in accordance with paragraphs (a)(1) or (a)(2) of this section shall hereinafter be referred to as the "Northern Europe price."

(4) If quotes are not available for one or more days in the 5-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by CCC.

(b) The prevailing world market price for upland cotton, adjusted in accordance with paragraph (c) of this section (adjusted world price), shall be applicable to the 1996 through 2002 crops of upland cotton.

(c) The adjusted world price for upland cotton shall equal the Northern

Europe price as determined in accordance with paragraph (a) of this section, adjusted as follows:

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of M $1\frac{3}{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets.

(2) The price determined in accordance with paragraph (c)(1) of this section shall be adjusted to reflect the price of Strict Low Middling (SLM) $1\frac{1}{16}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton (U.S. base quality) by deducting the difference, as announced by CCC, between the applicable loan rate for a crop of upland cotton for M $1\frac{3}{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

(3) The price determined in accordance with paragraph (c)(2) shall be adjusted to average U.S. location by deducting the difference between the average loan rate for a crop of upland cotton of the U.S. base quality in the designated U.S. spot markets and the corresponding crop year national average loan rate for a crop of upland cotton of the U.S. base quality, as announced by CCC.

(4)(i) The prevailing world market price, as adjusted in accordance with paragraphs (c)(1) through (c)(3), may be

further adjusted if it is determined that:

(A) Such price is less than 115 percent of the current crop-year loan level for U.S. base quality cotton, and

(B) The Friday through Thursday average price quotation for the lowest-priced United States growth as quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe price) is greater than the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe.

(ii) During the period when both current shipment prices and forward shipment prices are available for growths quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe, the U.S. Northern Europe price provided in paragraph (c)(4)(i)(B) shall be determined as follows: Beginning with the week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe current price) and the average of the forward shipment prices for the preceding Friday through Thursday of the lowest-priced United States growth quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe (U.S. Northern Europe forward price) are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the average of the U.S. Northern Europe current price and the average of the U.S. Northern Europe forward price are available, the result calculated by the following procedure:

(A) Weeks 1 and 2: $(2 \times \text{U.S. Northern Europe current price}) + (\text{U.S. Northern Europe forward price}) / 3$.

(B) Weeks 3 and 4: $(\text{U.S. Northern Europe current price}) + (\text{U.S. Northern Europe forward price}) / 2$.

(C) Weeks 5 and 6: $(\text{U.S. Northern Europe current price}) + (2 \times \text{U.S. Northern Europe forward price}) / 3$.

(D) Week 7 through July 31: U.S. Northern Europe forward price.

(iii) In determining the U.S. Northern Europe price as provided in paragraphs (c)(4)(i)(B) and (c)(4)(ii):

(A) If quotes for either the U.S. Memphis territory or the California/Arizona territory are not available for any week, the available quotations will be used.

(B) If quotes are not available for one or more days in the 5-day period, the available quotes during the period will be used.

(C) If no quotes are available for either the U.S. Memphis territory or the California/Arizona territory during the Friday through Thursday period, no adjustment will be made.

(iv)(A) The adjustment shall be based on some or all of the following data, as available:

(1) The U.S. share of world exports;

(2) The current level of cotton export sales and shipments; and

(3) Other data determined by CCC to be relevant in establishing an accurate prevailing world market price, adjusted to United States quality and location.

(B) The adjustment may not exceed the difference between the U.S. Northern Europe price, as determined in paragraphs (c)(4)(i) through (c)(4)(iii), and the Northern Europe price, as determined in paragraph (a).

(d) In determining the average difference in the 52-week period as provided in paragraph (c)(1):

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe and the average price of M $1\frac{3}{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual cost shall be substituted in lieu thereof for such week.

(ii) Less than 85 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 85 percent of such actual

cost shall be substituted in lieu thereof for such week.

(2) If a Thursday price quotation for either the U.S. Memphis territory or the California/Arizona territory as quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe is not available for any week, CCC:

(i) May use the available northern Europe quotation to determine the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe and the average price of M $1\frac{3}{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted each Thursday in the designated U.S. spot markets for that week, or

(ii) May not take that week into consideration.

(3) If Thursday price quotations for any week are not available for either,

(i) both the Memphis territory and the California/Arizona territory as quoted for M $1\frac{3}{32}$ inch cotton C.I.F. northern Europe, or

(ii) the average price of M $1\frac{3}{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton as quoted in the designated U.S. spot markets, that week will not be taken into consideration.

(e) The adjusted world price for upland cotton as determined in accordance with paragraph (c), and the amount of the additional adjustment as determined in accordance with paragraph (f), shall be announced, to the extent practicable, at 5 p.m. eastern time each Thursday continuing through the last Thursday of July 2003. In the event that Thursday is a non-workday, the determination will be announced, to the extent practicable, at 8 a.m. eastern time the next workday. The adjusted world price and the amount of the additional adjustment will be effective upon announcement and will remain in effect for a period as announced by CCC.

(f)(1)(i) The adjusted world price, as determined in accordance with paragraph (c), shall be subject to further adjustments as provided in this section with respect to all qualities of upland

cotton eligible for loan except the following grades of upland cotton with a staple length of $1\frac{1}{16}$ inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5;

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2; and

(ii) Grade and Staple length must be determined in accordance with §1427.9. If no such official classification is presented, the coarse count adjustment shall not be made.

(2) The adjustment for upland cotton provided for by paragraph (f)(1) shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price, and

(A) During the period when only one daily price quotation for each growth quoted for "coarse count" cotton C.I.F. northern Europe is available the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe; or

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for "coarse count" cotton C.I.F. northern Europe, the result calculated by the following procedure: Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (Northern Europe coarse count current price) and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (Northern Europe coarse count forward price) are not available during that period, beginning with the first week covering the

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period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(1) Weeks 1 and 2: $(2 \times \text{Northern Europe coarse count current price}) + \text{Northern Europe coarse count forward price}/3$;

(2) Weeks 3 and 4: $\text{Northern Europe coarse count current price} + \text{Northern Europe coarse count forward price}/2$;

(3) Weeks 5 and 6: $\text{Northern Europe coarse count current price} + (2 \times \text{Northern Europe coarse count forward price})/3$; and

(4) Week 7 through July 31: The Northern Europe coarse count forward price, minus:

(ii) The difference between the applicable loan rate for a crop of upland cotton for M $1\frac{3}{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton and the loan rate for a crop of upland cotton for SLM $1\frac{1}{32}$ inch (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 24 through 25 grams per tex) cotton.

(iii) The result of the calculation as determined in accordance with this paragraph (f)(2) shall hereinafter be referred to as the "Northern Europe coarse count price."

(3) With respect to the determination of the Northern Europe coarse count price in accordance with paragraph (f)(2)(i):

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be taken into consideration; and

(iii) If quotes for three growths are not available for at least three days in the 5-day period, that week will not be taken into consideration, in which case the adjustment determined in accordance with paragraph (f)(2) for the latest available week will continue to be applicable.

(g) If the 6-week transition periods from using current shipment prices to using forward shipment prices in the determination of the Northern Europe price in accordance with paragraph

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(a)(2), and the Northern Europe coarse count price in accordance with paragraph (f)(2)(i)(B) do not begin at the same time, CCC shall use either current shipment prices, forward shipment prices, or any combination thereof, to determine the Northern Europe price and/or the Northern Europe coarse count price used in the determination of the adjustment for upland cotton provided for by paragraph (f)(1) and determined in accordance with paragraph (f)(2), in order to prevent distortions in such adjustment.

(h) The adjusted world price, determined in accordance with paragraph (c), shall be subject to further adjustments, as determined by CCC based upon the Schedule of Premiums and Discounts and the location differentials applicable to each warehouse location as announced in accordance with the loan program for a crop of upland cotton.

§ 1427.26 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with 44 U.S.C. chapter 35 and OMB Control number 0560-0040, 0560, 0074, 0560-0027, and 0560-0054 was assigned.

Subpart B—Regulations for the Upland Cotton First Handler Marketing Certificate Program.

SOURCE: 56 FR 41434, Aug. 21, 1991, unless otherwise noted.

§ 1427.50 Applicability.

(a) The regulations of this subpart are applicable during the period beginning August 1, 1991, and ending July 31, 1996. These regulations set forth the terms and conditions under which the Commodity Credit Corporation ("CCC") shall make payments, in the form of commodity certificates or cash, to eligible first handlers of upland cotton who have entered into an Upland Cotton First Handler Agreement with CCC to participate in the first handler marketing certificate program, in accordance with Section 103B(a)(5)(B) of the Agricultural Act of 1949, as amended.

(b) If, during the period beginning August 1, 1991, and ending July 31, 1996, CCC determines that the adjusted world price for upland cotton determined in accordance with §1427.25 is less than the loan repayment rate for a crop of upland cotton determined in accordance with §1427.19(c) and that the cotton loan program implemented in accordance with §1427.8 and that the loan deficiency payment program implemented in accordance with §1427.23, have failed to make domestically produced upland cotton competitive on the world market, then CCC shall make payments in accordance with the provisions of this subpart to eligible first handlers of upland cotton.

(c) Additional terms and conditions are set forth in the Upland Cotton First Handler Agreement which must be executed by the first handler in order to receive such payments.

(d) Forms which are used in administering the first handler marketing certificate program shall be prescribed by CCC.

[56 FR 41434, Aug. 21, 1991, as amended at 57 FR 14328, Apr. 20, 1992]

§ 1427.51 Administration.

(a) The first handler marketing certificate program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee, and shall be carried out in the field by FSA's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, may authorize KCCO or KCMO to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of

the first handler marketing certificate program.

(e) A representative of CCC may execute first handler marketing certificate payment applications, Upland Cotton First Handler Agreements and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications, Upland Cotton First Handler Agreements and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

[56 FR 41434, Aug. 21, 1991, as amended at 57 FR 14328, Apr. 20, 1992]

§ 1427.52 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in §1427.3 of this part and part 1413 of this chapter shall also be applicable.

Baled lint means cotton which has passed through the ginning process and has been baled.

Loose means samples removed from bales of upland cotton for classification purposes which have been rebaled.

Modified seed cotton cleaning equipment means incline, airline or impact seed cotton cleaners which have been modified to remove the smaller trash material normally present in raw (unprocessed) motes.

Person means an individual, corporation, partnership, association, or other business entity.

Raw (unprocessed) motes means lint cleaner waste resulting from the ginning process.

Reginned (processed) motes means semi-processed motes which have been further cleaned through one or more stages of modified seed cotton cleaning and one or more stages of lint cleaning equipment (sawtooth lint cleaning) by the gin, an intermediate processor or an end user, which are of a quality suitable, without further processing, for spinning, papermaking or other traditional manufacturing uses, and which have been rebaled, unless converted to

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an end use in a continuous manufacturing process by the end user who further cleaned the semi-processed motes.

Semi-processed motes means raw motes processed at the gin through one stage of modified seed cotton cleaning equipment, which have been baled, or moved directly into the ginning process.

[56 FR 41434, Aug. 21, 1991, as amended at 56 FR 59853, Nov. 26, 1991]

§ 1427.53 Eligible upland cotton.

(a) For the purposes of this subpart, eligible upland cotton is domestically produced 1991 or subsequent crop upland cotton which meets the requirements of paragraphs (b) and (c) of this section.

(b) Eligible upland cotton must be either—

(1) Baled lint which is not pledged as collateral for a price support loan;

(2) Baled lint which has been pledged as collateral for a price support loan but which has been redeemed with cash;

(3) Baled lint which has been classified by USDA's Agricultural Marketing Service as Below Grade;

(4) Loose; or

(5) Semi-processed motes.

(c) Eligible upland cotton must not be:

(1) Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(2) Cotton which was obtained through the exchange of a commodity certificate for cotton which had been pledged as collateral for a price support loan or from CCC inventory in accordance with the provisions of part 1470 of this chapter;

(3) Domestically produced cotton which has been exported and then re-imported into the United States;

(4) Raw (unprocessed) motes;

(5) Reginned (processed) motes; or

(6) Textile mill wastes.

§ 1427.54 Eligible first handlers.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible first handlers:

(1) A person regularly engaged in buying or selling eligible upland cotton who has entered into an agreement

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with CCC to participate in the first handler marketing certificate program;

(2) A producer of upland cotton who sells directly to domestic textile mills or for export or who tenders upland cotton on a New York Futures Exchange number 2 contract and who has entered into an agreement with CCC to participate in the first handler marketing certificate program; and

(3) A cooperative marketing association, approved in accordance with part 1425 of this chapter, that acquires the upland cotton production of its members and that has entered into an agreement with CCC to participate in the first handler marketing certificate program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the Upland Cotton First Handler Agreement and instructions issued by CCC.

§ 1427.55 Upland cotton first handler agreement.

(a) Payments in accordance with this subpart shall be made available to eligible first handlers who have entered into an Upland Cotton First Handler Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the Upland Cotton First Handler Agreement and instructions issued by CCC.

(b) Upland Cotton First Handler Agreements may be obtained from Cotton Branch, CRD, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205. In order to participate in the program authorized by this subpart, first handlers must execute the Upland Cotton First Handler Agreement and forward an original and two copies to KCCO.

§ 1427.56 Form of payment.

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter, or in cash, as determined and announced by CCC.

[57 FR 14329, Apr. 20, 1992]

§ 1427.57 Payment rate.

The payment rate for the purposes of calculating payments made available

in accordance with this subpart shall be based upon the difference between the adjusted world price for upland cotton determined in accordance with § 1427.25 and the loan repayment rate determined in accordance with § 1427.19 and the Upland Cotton First Handler Agreement. A coarse count adjustment shall be applied in accordance with § 1427.25(f) and the Upland Cotton First Handler Agreement. Payment rates for Below Grade, loose and semi-processed motes shall be based on a percentage of the basic rate for baled lint, exclusive of coarse count adjustment, as specified in the Upland Cotton First Handler Agreement.

§ 1427.58 Payment.

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.57, by

(2) The net weight (gross weight minus the weight of bagging and ties), determined as specified in the Upland Cotton First Handler Agreement, of eligible upland cotton that is purchased by an eligible first handler for either domestic consumption or export during a period in which a payment rate is established.

(b) Eligible upland cotton will be considered to be purchased by the first handler on the date title to the cotton passes to the first handler, as determined by CCC.

(c) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, as required by the provisions of the Upland Cotton First Handler Agreement and instructions issued by CCC.

Subpart C—Regulations for the Upland Cotton User Marketing Certificate Program.

SOURCE: 56 FR 41435, Aug. 21, 1991, unless otherwise noted.

§ 1427.100 Applicability.

(a) The regulations in this subpart are applicable during the period beginning August 1, 1991, and ending July 31, 2003. These regulations set forth the

terms and conditions under which the CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of upland cotton who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC to participate in the upland cotton user marketing certificate program in accordance with Section 136(a) of the Federal Agriculture Improvement and Reform Act of 1996.

(b)(1) During the period beginning August 1, 1991, and ending July 31, 2003, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in any week following a consecutive 4-week period in which—

(i) The Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch ("M 1 $\frac{3}{32}$ inch") cotton, delivered C.I.F. (cost, insurance and freight) Northern Europe ("U.S. Northern Europe price") exceeds the Friday through Thursday average price quotation for the five lowest-priced growths, as quoted for M 1 $\frac{3}{32}$ inch cotton, delivered C.I.F. Northern Europe ("Northern Europe price") by more than 1.25 cents per pound; and

(ii) The adjusted world price for upland cotton, determined in accordance with § 1427.25, does not exceed 130 percent of the current crop year loan level for the base quality of upland cotton.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, CCC shall not issue marketing certificates or cash payments if, for the immediately preceding consecutive 10-week period, the U.S. Northern Europe price, adjusted for the value of any certificates or cash payments issued under paragraph (b)(1) of this section, exceeds the Northern Europe price by more than 1.25 cents per pound.

(3) Notwithstanding the provisions of this subpart, user marketing certificate program payments shall not exceed \$701,000,000 during fiscal years 1996 through 2002. Any outstanding obligations incurred by CCC to exporters under this program before April 5, 1996, will not be subject to the \$701,000,000 limitation. Obligations incurred by

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CCC on or after April 5, 1996, will be charged against the \$701,000,000.

(c) Additional terms and conditions are set forth in the Upland Cotton Domestic User/Exporter Agreement which must be executed by the domestic user or exporter in order to receive such payments.

(d) Forms which are used in administering the upland cotton user marketing certificate program shall be prescribed by CCC.

[56 FR 41435, Aug. 21, 1991, as amended at 57 FR 14329, Apr. 20, 1992; 61 FR 37611, July 18, 1996]

§ 1427.101 Administration.

(a) The upland cotton user marketing certificate program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee and shall be carried out in the field by FSA's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, may authorize KCCO or KCMO to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the upland cotton user marketing certificate program.

(e) A representative of CCC may execute upland cotton user marketing certificate payment applications, Upland Cotton Domestic User/Exporter Agreements and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications, Upland Cotton Domestic User/Exporter Agreements and related documents not executed in accordance with the terms and conditions determined and announced

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by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

[56 FR 41435, Aug. 21, 1991, as amended at 57 FR 14329, Apr. 20, 1992; 61 FR 37611, July 18, 1996]

§ 1427.102 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in §§1427.3 and 1427.52 of this part and part 1413 of this chapter shall also be applicable.

Bale opening means the removal of the bagging and ties from a bale of eligible upland cotton in the normal opening area, immediately prior to use, by a manufacturer in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing raw cotton into cotton products in the United States.

Consumption means, the use of eligible cotton by a domestic user in the manufacture in the United States of cotton products.

Cotton product means any product containing cotton fibers that result from the use of a bale of cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the growth quoted for M 1³/₃₂ inch cotton, C.I.F. Northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Forward shipment price means, during the period in which two daily price quotations are available for the growths quoted for M 1³/₃₂ inch cotton, C.I.F. Northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

Northern Europe current price means the average for the preceding Friday through Thursday of the current shipment prices for the five lowest-priced growths of the growths quoted for M 1³/₃₂ inch cotton, C.I.F. Northern Europe.

Northern Europe forward price means the average for the preceding Friday through Thursday of the forward shipment prices for the five lowest-priced

growths of the growths quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. Northern Europe.

Northern Europe price means, during the period in which only one daily price quotation is available for the growth quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. Northern Europe, the average of the price quotations for the preceding Friday through Thursday of the five lowest-priced growths of the growths quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. Northern Europe.

Optional origin export contract means a contract under which an exporter may sell cotton produced in a foreign country with the option to substitute cotton produced in the United States.

U.S. Northern Europe current price means the average for the preceding Friday through Thursday of the current shipment prices for the lowest-priced United States growth as quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. Northern Europe.

U.S. Northern Europe forward price means the average for the preceding Friday through Thursday of the forward shipment prices for the lowest-priced United States growth as quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. Northern Europe.

U.S. Northern Europe price means, during the period in which only one daily price quotation is available for the United States growths quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. Northern Europe, the average of the price quotations for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M $1\frac{3}{32}$ inch cotton, C.I.F. Northern Europe.

§ 1427.103 Eligible upland cotton.

(a) For the purposes of this subpart, eligible upland cotton is domestically produced baled upland cotton which is—

(1) Opened by an eligible domestic user on or after August 1, 1991, and on or before July 31, 2003, or, excluding cotton covered under paragraph (a)(2), exported by an eligible exporter on or after July 18, 1996 and on or before July 31, 2003, during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect, and which meets

the requirements of paragraphs (b) and (c); or

(2) Sold for export by an eligible exporter under a written contract entered into on or after August 1, 1991, and prior to July 18, 1996 during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect and which is contracted for delivery by the eligible exporter by not later than September 30, 1996, and which meets the requirements of paragraphs (b) and (c).

(b) Eligible upland cotton must be either—

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade;

(2) Loose;

(3) Semi-processed motes which are of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(4) Reginned (processed) motes.

(c) Eligible upland cotton must not be—

(1) Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(2) Imported cotton;

(3) Raw (unprocessed) motes;

(4) Semi-processed motes which are not of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(5) Textile mill wastes; or

(6) Semi-processed or reginned (processed) motes which have been blended with textile mill waste or other fibers.

[56 FR 41435, Aug. 21, 1991, as amended at 56 FR 59853, Nov. 26, 1991; 57 FR 14329, Apr. 20, 1992; 61 FR 37611, July 18, 1996]

§ 1427.104 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible domestic users and exporters of upland cotton:

(1) A person regularly engaged in the business of opening bales of eligible upland cotton for the purpose of manufacturing such cotton into cotton products in the United States ("domestic user"), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program; or

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(2) A person, including a producer or a cooperative marketing association approved in accordance with part 1425 of this chapter, regularly engaged in selling eligible upland cotton for exportation from the United States ("exporter"), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

§ 1427.105 Upland Cotton Domestic User/Exporter Agreement.

(a) Payments in accordance with this subpart shall be made available to eligible domestic users and exporters who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

(b) Upland Cotton Domestic User/Exporter Agreements may be obtained from Cotton Branch, CRD, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward an original and two copies to KCCO.

§ 1427.106 Form of payment.

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter, or in cash, as determined and announced by CCC.

[57 FR 14329, Apr. 20, 1992]

§ 1427.107 Payment rate.

(a) The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be determined by CCC as follows:

(1) For exporters for cotton shipped on or after July 18, 1996 (excluding cotton covered under paragraph (a)(2)) and

for domestic users for bales opened during the period—

(i) For bales opened beginning the Friday following August 1 and ending the week in which the Northern Europe current price and the Northern Europe forward price first become available, the payment rate shall be the difference between the U.S. Northern Europe price minus 1.25 cents per pound, and the Northern Europe price in the fourth week of a consecutive 4-week period in which the U.S. Northern Europe price exceeded the Northern Europe price each week by more than 1.25 cents per pound, and the adjusted world price (AWP) did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period.

(ii) Beginning the Friday through Thursday week after the week in which the NEc price and the NEf price first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USNEc price, minus 1.25 cents per pound, and the NEc price in the fourth week of a consecutive 4-week period in which the USNEc price exceeded the NEc price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent.

(iii) For bales opened before August 30, 1991, the payment rate shall be zero.

(2) For exporters prior to July 18, 1996 for cotton which is contracted for delivery by not later than September 30, 1996,—

(i) For contracts entered into beginning the Friday following August 1 and ending the week in which the Northern Europe current price and the Northern Europe forward price first become available which specify shipment of the cotton by not later than September 30 of the following marketing year, the payment rate shall be the difference between the U.S. Northern Europe price minus 1.25 cents per pound, and the Northern Europe price in the fourth week of a consecutive 4-week period in which the U.S. Northern Europe price exceeded the Northern Europe price each week by more than 1.25

cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period.

(ii) For contracts entered into during the period beginning the Friday through Thursday week after the week in which the Northern Europe current price and the Northern Europe forward price first become available and ending the Thursday following July 31 which specify shipment of the cotton by not later than September 30 of such year, the payment rate shall be the difference between the U.S. Northern Europe current price minus 1.25 cents per pound and the Northern Europe current price in the fourth week of a consecutive 4-week period in which the U.S. Northern Europe current price exceeded the Northern Europe current price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period.

(iii) For contracts entered into prior to the Friday through Thursday week that includes October 1 which specify shipment after September 30 of the year following such contract period, the payment rate shall be zero.

(iv) For contracts entered into during the period beginning the Friday through Thursday week that includes October 1 until the Friday through Thursday week after the week in which the Northern Europe current price and the Northern Europe forward price first become available which specify shipment of the cotton after September 30 following such contract period, payments shall be made whenever the U.S. Northern Europe price exceeds the Northern Europe price by more than 1.25 cents per pound for the preceding consecutive 4-week period and the AWP did not exceed the current crop year loan level for the base quality of upland cotton by more than 130 percent in any week of such 4-week period. The payment rate shall be the lower of:

(A) The difference between the U.S. Northern Europe price minus 1.25 cents per pound and the Northern Europe price in the fourth week of such 4-week period; or

(B) 2.5 cents per pound.

(v) For contracts entered into beginning the Friday through Thursday week after the week in which the Northern Europe current price and the Northern Europe forward price first become available through the third Friday through Thursday week after the Northern Europe current price and the Northern Europe forward price first become available which specify shipment of the cotton after September 30 following such contract period, payments shall be made whenever the U.S. Northern Europe current price exceeds the Northern Europe current price by more than 1.25 cents per pound for the preceding consecutive 4-week period and the AWP did not exceed the current crop year loan level for the base quality of upland cotton by more than 130 percent in any week of such 4-week period. The payment rate shall be the lower of:

(A) The difference between the U.S. Northern Europe current price minus 1.25 cents per pound and the Northern Europe current price in the fourth week of such 4-week period; or

(B) 2.5 cents per pound.

(vi) Notwithstanding the provisions of paragraphs (a)(2)(iv) and (a)(2)(v) of this section, with respect to contracts which specify shipment of the cotton after September 30, 1994, but before September 30, 1995, no payments will be made on contracts made prior to the fourth Friday through Thursday week after the Northern Europe current price and the Northern Europe forward price first become available during calendar year 1994.

(vii) For contracts entered into during the period beginning the fourth Friday through Thursday week after the Northern Europe current price and the Northern Europe forward price first become available and ending the Thursday following July 31 which specify shipment of the cotton after September 30 following such contract period, payments shall be made whenever the U.S. Northern Europe forward price exceeds the Northern Europe forward price by more than 1.25 cents per pound for the preceding consecutive 4-week period and the AWP did not exceed the loan level for the upcoming marketing year for the base quality of

upland cotton by more than 130 percent in any week of such 4-week period. The payment rate shall be the lower of:

(A) The difference between the U.S. Northern Europe forward price minus 1.25 cents per pound and the Northern Europe forward price in the fourth week of such 4-week period; or

(B) 20 percent of the difference between the U.S. Northern Europe forward price minus 1.25 cents per pound and the Northern Europe forward price in the fourth week of such 4-week period plus the payment rate for which such contracts were eligible in the preceding week.

(viii) For contracts entered into before August 30, 1991, the payment rate shall be zero.

(b) Notwithstanding the provisions of paragraph (a) of this section, no payment rate shall be established in a week following a consecutive 10-week period in which the U.S. Northern Europe price, adjusted for the value of any certificate or cash payment issued in accordance with paragraph (a) of this section, exceeds the Northern Europe price by more than 1.25 cents per pound.

(c) Notwithstanding the provisions of paragraph (a) of this section, whenever a 4-week period contains a combination of Northern Europe prices only for one to three weeks and Northern Europe current prices and North Europe forward prices only for one to three weeks such as occurs in the spring when the Northern Europe price is succeeded by the Northern Europe current price and the Northern Europe forward price ("spring transition period"), and at the start of a new marketing year when the Northern Europe current price and the Northern Europe forward price are succeeded by the Northern Europe price ("marketing year transition"):

(1) Under paragraphs (a)(1)(i) and (a)(2)(i) of this section, during the marketing year transition period, the Northern Europe forward price and the U.S. Northern Europe forward price in combination with the Northern Europe price and the U.S. Northern Europe price shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(2) Under paragraphs (a)(1)(ii), (a)(2)(ii), and (a)(2)(v) of this section, during the spring transition period, the Northern Europe current price and the U.S. Northern Europe current price in combination with the Northern Europe price and the U.S. Northern Europe price shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(d) Notwithstanding any other provision of this section, for contracts made by exporters prior to July 18, 1996, that specify shipment of the cotton by not later than September 30, 1996,—

(1) If shipment is completed by October 31 of such year, the payment rate shall be the payment rate established for the contract;

(2) If shipment is not completed by October 31 of such year, the payment rate shall be zero.

(3) If shipment is not completed by December 31 of such year, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the original contract payment rate or, if a replacement contract has been made, the replacement contract payment rate, or

(ii) 50 percent of the original contract payment rate.

(e) For U.S. cotton sold by the exporter under an optional origin contract for delivery by not later than September 30, 1996, prior to July 18, 1996, the payment rate shall not be established until the exporter notifies CCC in writing that the cotton shipped or to be shipped was or will be of United States origin. Upon receipt of such notification, CCC will establish the payment rate for cotton shipped under such contract at the lower of:

(1) The payment rate in effect when the optional origin contract was made, or

(2) The payment rate in effect on the date of the written notification which is submitted to CCC stating that the cotton shipped, or to be shipped, under such contract was, or shall be, of United States origin.

(f) For the purposes of this subpart—

(1) With respect to the determination of the U.S. Northern Europe price, the U.S. Northern Europe current price, the U.S. Northern Europe forward price, the Northern Europe price, the Northern Europe current price and the Northern Europe forward price—

(i) If daily quotes are not available for one or more days of the 5-day period, the available quotes during the period will be used.

(ii) If no daily quotes are available for the entire 5-day period for either or both the U.S. Northern Europe price and the Northern Europe price during the period when only one daily price quotation is available for each growth quoted for M 1-3/32 inch cotton, delivered C.I.F. Northern Europe; or the U.S. Northern Europe current price and the Northern Europe current price; or the U.S. Northern Europe forward price and the Northern Europe forward price, that week will not be taken into consideration, in which case CCC may establish a payment rate at a level it determines to be appropriate, taking into consideration the payment rate determined in accordance with paragraph (a) of this section for the latest available week.

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEc price and the NEc price, the marketing year transition shall be implemented immediately as provided for in paragraph (c)(1).

(2) With respect to the determination of the U.S. Northern Europe price, the U.S. Northern Europe current price, and the U.S. Northern Europe forward price, if a quote for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 1-3/32 inch cotton, delivered C.I.F. Northern Europe, is not available for each or any day of the 5-day period, the available quote will be used.

(g) Payment rates for loose, reginned motes and semi-processed motes which are of a quality suitable, without fur-

ther processing, for spinning, paper-making or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the Upland Cotton Domestic User/Exporter Agreement.

[56 FR 41435, Aug. 21, 1991, as amended at 56 FR 59853, Nov. 26, 1991; 57 FR 14329, Apr. 20, 1992; 57 FR 49639, Nov. 3, 1992; 58 FR 42843, Aug. 12, 1993; 59 FR 17919, Apr. 15, 1994; 61 FR 37611, July 18, 1996]

§ 1427.108 Payment.

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.107, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined in accordance with paragraph (b) of this section, of eligible upland cotton bales that are opened by an eligible domestic user or sold for export by an eligible exporter during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be determined based upon:

(1) For domestic users, the weight on which settlement for payment of the cotton was based ("landed mill weight");

(2) For reginned motes processed by an end user who converted such motes, without rebaling, to an end use in a continuous manufacturing process, the net weight of the reginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible upland cotton will be considered—

(1) Purchased by the domestic user on the date the bale is opened in preparation for consumption; and

(2) From August 1, 1991, through July 17, 1996, sold by the exporter on the date the contract for sale is confirmed in writing and which is contracted for

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delivery by not later than September 30, 1996; and

(3) Excluding cotton covered under paragraph (c)(2), through July 31, 2003, exported by the exporter on the date that CCC determines is the date on which the cotton is shipped.

(d) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchases and consumption of eligible cotton by the domestic user or proof of export of eligible cotton by the exporter, as required by the provisions of the Upland Cotton Domestic User/Exporter Agreement issued by CCC.

[56 FR 41434, Aug. 21, 1991, as amended at 61 FR 37611, July 18, 1996]

§ 1427.109 Contract cancellations.

(a) For the purposes of this subpart, except as provided in paragraph (e) of this section, any contract entered into by an exporter that is canceled or amended to reduce the contract quantity shall be replaced by the exporter with a subsequent contract (“replacement contract”) designated by the exporter at the time a copy of the replacement contract is submitted to CCC, as specified in the Upland Cotton Domestic User/Exporter Agreement (“the Agreement”). Optional origin export contracts that are canceled/amended must be replaced with either an optional origin export contract or a contract to export United States cotton. The replacement contract shall specify shipment of the cotton by not later than September 30 following the shipment date specified in the original contract, except if the cancellation/amendment of a contract that specified shipment by not later than September 30 occurs after September 1, the replacement contract shall be entered into within 30 days after the cancellation/amendment and shipment shall be completed within 30 days after the replacement contract is entered into, but in no event may shipment be completed later than December 31. The provisions of this paragraph shall apply to—

(1) All undelivered (open) export contracts (including optional origin export

contracts) outstanding as of the later of the date the Agreement was executed by the exporter or August 29, 1991;

(2) Any export contracts that were canceled, or amended to reduce the contract quantity, between the later of June 18, 1991, or 75 days prior to the date the Agreement was executed by the exporter and the later of the date the Agreement was executed by the exporter or August 29, 1991, which are not replaced by the later of the date the Agreement was executed by the exporter or August 29, 1991; and

(3) All new export contracts entered into by the exporter on or after August 30, 1991, and prior to July 18, 1996 which are for delivery by not later than September 30, 1996.

(b) Notwithstanding the provisions of § 1427.107, the payment rate for a replacement contract shall be the lesser of the payment rate in effect on the date of the original contract or the payment rate in effect on the date of the replacement contract.

(c) If shipment of the cotton on any replacement contract is—

(1) Completed by October 31, the payment rate shall be the payment rate determined in accordance with paragraph (b) of this section;

(2) Not completed by October 31, the payment rate shall be zero;

(3) Not completed, or a replacement contract is not designated by the exporter by December 31, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the payment rate determined in accordance with paragraph (b) of this section, or

(ii) 50 percent of the original contract payment rate.

(d) Notwithstanding the provisions of paragraphs (a) through (c) of this section, with respect to optional origin export contracts, shipment of foreign cotton will fulfill the shipment requirements but such cotton will be ineligible for payments.

(e) The provisions of paragraphs (a) through (d) of this section will not apply if CCC determines, based upon written evidence provided by the exporter, that a contract cancellation, amendment, or failure to export is due to reasons beyond the control of the exporter. If, as determined by CCC, the cancellation is beyond the control of the exporter, replacement contracts are not required, and the assessment of liquidated damages by CCC is waived. Documentation to support that contract cancellations are beyond the control of the exporter must be submitted to CCC. Requests for relief from naming a replacement contract will be examined by CCC on a case-by-case basis to determine if relief is warranted.

[56 FR 41435, Aug. 21, 1991, as amended at 58 FR 42843, Aug. 12, 1993; 61 FR 37611, July 18, 1996]

Subpart D—Regulations for the Recourse Seed Cotton Loan Program

SOURCE: 61 FR 37612, July 18, 1996, unless otherwise noted.

§ 1427.160 Applicability.

(a) The regulations in this subpart are applicable to the 1996 through 2002 crops of upland and extra long staple seed cotton. These regulations set forth the terms and conditions under which recourse seed cotton loans shall be made available by the Commodity Credit Corporation ("CCC"). Such loans will be available through March 31 of the year following the calendar year in which such crop is normally harvested. CCC may change the loan availability period to conform to State or locally imposed quarantines. Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Loan rates and the forms which are used in administering the recourse

seed cotton loan program for a crop of cotton are available in State and county Farm Service Agency (FSA) offices (State and county offices, respectively). Loan rates shall be based upon the location at which the loan collateral is stored.

(c) A producer must, unless otherwise authorized by CCC, request the loan at the county office which, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced. A CMA must, unless otherwise authorized by CCC, request the loan at a central county office designated by the State committee. All note and security agreements and related documents necessary for the administration of the recourse seed cotton loan program shall be prescribed by CCC and shall be available at State and county offices.

(d) Loans shall not be available for seed cotton produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.161 Administration.

(a) The recourse seed cotton loan program which is applicable to a crop of cotton shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee and shall be carried out in the field by State and county FSA committees (State and county committees, respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, FSA), or a designee from determining any question arising under the recourse seed cotton program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, FSA, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the recourse seed cotton loan program.

(f) A representative of CCC may execute loan applications and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1427.162 Definitions.

Section 1427.3 of this part shall be applicable to this subpart.

§ 1427.163 Disbursement of loans.

(a) A producer or the producer's agent shall request a loan at the county office for the county which, in accordance with part 718 of this title, is responsible for administering programs for the farm on which the cotton was produced and which will assist the producer in completing the loan documents, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain loans through a central county office designated by the State committee.

(b) Disbursement of each loan will be made by the county office of the county which is responsible for administering programs for the farm on which the cotton was produced, except that CMA's designated by producers to obtain loans in their behalf may, unless otherwise authorized by CCC, obtain disbursement of loans at a central county office designated by the State committee. Service charges shall be deducted from the loan proceeds. The

producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, the total amount disbursed under the loan, and charges plus interest shall be refunded promptly.

§ 1427.164 Eligible producer.

(a) An eligible producer of a crop of cotton shall be a person (i.e., an individual, partnership, association, corporation, CMA estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop of cotton as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12 and 718 of this title, and part 1412 of this chapter.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the receiver, executor, administrator, guardian, or trust. Loan and loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive loans only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the

applicable loan documents are signed by the guardian;

(3) Any note and security agreement signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) Two or more producers may obtain a single joint loan with respect to cotton which is stored in an approved storage if the cotton is jointly owned by such producers. The cotton may have been produced by two or more eligible producers on one or more farms.

(e) A CMA may obtain loans on the eligible production of such cotton with respect to such cotton on behalf of the members of the CMA who are eligible to receive loans for a crop of cotton. For purposes of this subpart, the term "producer" includes a CMA.

§ 1427.165 Eligible seed cotton.

(a) Seed cotton pledged as collateral for a loan must be tendered to CCC by an eligible producer and must:

(1) Be in existence and in good condition at the time of disbursement of loan proceeds;

(2) Be stored in identity-preserved lots in approved storage meeting requirements of §1427.171;

(3) Be insured at the full loan value against loss or damage by fire;

(4) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the seed cotton to CCC as collateral for a loan;

(5) Not have been previously sold and repurchased; or pledged as collateral for a CCC loan and redeemed;

(6) Be production from acreage that has been reported timely in accordance with part 718 of this title; and

(7) For upland cotton, be production from a farm with a production flexibility contract in accordance with part 1412 of this chapter.

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that

if a control sample of the lot of cotton is classed by an Agricultural Marketing Service (AMS), Cotton Classing Office or other entity approved by CCC, the quality for the lot shall be the quality shown on the applicable documentation issued for the control sample.

(c) To be eligible for loan, the beneficial interest in the seed cotton must be in the producer who is pledging the seed cotton as collateral for a loan as provided in §1427.5(c).

§ 1427.166 Insurance.

The seed cotton must be insured at the full loan value against loss or damage by fire.

§ 1427.167 Liens.

If there are any liens or encumbrances on the seed cotton tendered as collateral for a loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the cotton after the loan is approved.

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§ 1427.169 Fees, charges, and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

§ 1427.170 Quantity for loan.

(a) The quantity of lint cotton in each lot of seed cotton tendered for loan shall be determined by the county office by multiplying the weight or estimated weight of seed cotton by the lint turnout factor determined in accordance with paragraph (b).

(b) The lint turnout factor for any lot of seed cotton shall be the percentage determined by the county committee representative during the initial inspection of the lot. If a control portion of the lot is weighed and ginned, the turnout factor determined for the portion of cotton ginned will be used for the lot. If a control portion is not weighed and ginned, the lint turnout

factor shall not exceed 32 percent for machine-picked cotton and 22 percent for machine-stripped cotton unless acceptable proof is furnished showing that the lint turnout factor is greater.

(c) Loans shall not be made on more than a percentage established by the county committee of the quantity of lint cotton determined as provided in this section. If the seed cotton is weighed, the percentage to be used shall not be more than 95 percent. If the quantity is determined by measurement, the percentage to be used shall not be more than 90 percent. The percentage to be used in determining the maximum quantity for any loan may be reduced below such percentages by the county committee when determined necessary to protect the interests of CCC on the basis of one or more of the following risk factors:

- (1) Condition or suitability of the storage site or structure;
- (2) Condition of the cotton;
- (3) Location of the storage site or structure; and
- (4) Other factors peculiar to individual farms or producers which related to the preservation or safety of the loan collateral. Loans may be made on a lower percentage basis at the producer's request.

§ 1427.171 Approved storage.

Approved storage shall consist of storage located on or off the producer's farm (excluding public warehouses) which is determined by a county committee representative to afford adequate protection against loss or damage and which is located within a reasonable distance, as determined by CCC, from an approved gin. If the cotton is not stored on the producer's farm, the producer must furnish satisfactory evidence that the producer has the authority to store the cotton on such property and that the owner of such property has no lien for such storage against the cotton. The producer must provide satisfactory evidence that the producer and any person having an interest in the cotton including CCC, have the right to enter the premises to inspect and examine the cotton and shall permit a reasonable time to such persons to remove the cotton from the premises.

§ 1427.172 Settlement.

(a) A producer may, at any time prior to maturity of the loan, obtain release of all or any part of the loan seed cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer's agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from CCC for removal of such cotton. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cottonseed obtained therefrom. The ginner shall inform the county office in writing immediately after the seed cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan principal plus interest and charges thereon must be satisfied not later than the earlier of:

- (i) The date established by the county committee;
- (ii) 5 days after the date of the producer received the AMS classification in accordance with §1427.9 (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or
- (iii) The loan maturity date.

(2) If the seed cotton or lint cotton is sold, the loan principal, interest, and charges must be satisfied immediately.

(3) A producer, except a CMA, may obtain a nonrecourse loan or loan deficiency payment in accordance with subpart A of this part, on the lint cotton, but:

- (i) The loan principal, interest, and charges on the seed cotton must be satisfied from the proceeds of the nonrecourse loan in accordance with subpart A of this part; or
- (ii) The loan deficiency payment must be applied to the loan principal, interest, and charges on the outstanding seed cotton loan.

(4) A CMA must repay the seed cotton loan principal, interest, and charges before pledging the cotton for a nonrecourse loan or before a loan deficiency payment can be approved in accordance with subpart A of this part,

on the lint cotton. If CMA's authorized by producers to obtain loans in their behalf remove seed cotton from storage prior to obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless the CMA:

(i) Notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnishes CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan principal, plus interest and charges, within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the seed cotton or to release the producer or CMA from liability for the loan principal, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan principal, plus interest and charges on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a non-recourse loan in accordance with subpart A of this part on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the seed cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the seed cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the seed cotton shall be considered abandoned.

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been ginned and pledged as collateral for a nonrecourse loan in accordance with subpart A of this part by the seed cotton loan maturity date may be removed from storage by CCC and ginned and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon such terms as CCC may determine at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds received from the sales of the cotton are less than the amount due on the loan (including principal, interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference. If the proceeds received from sale of the cotton are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the cotton, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

§ 1427.174 Maturity of seed cotton loans.

Seed cotton loans mature on demand by CCC but no later than May 31 following the calendar year in which such crop is normally harvested.

§ 1427.175 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining a loan, maintaining a loan, or settling a loan or if the producer disposes of or moves the loan collateral without the prior approval of CCC, such loan amount shall be refunded upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan;

(ii) Any additional amounts paid by CCC with respect to the loan;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral;

(iv) Applicable interest on such amounts; and

(v) Liquidated damages in accordance with paragraph (e).

(2) Notwithstanding any provision of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC, the value of such collateral acquired by CCC shall be equal to the sales price of the cotton less any costs incurred by CCC in completing the sale.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this subpart, the producer shall be liable for repayment of such excess, plus interest. In addition, seed cotton pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this subpart, the producer shall be personally liable for repayment of the amount of such deficiency plus applicable interest.

(d) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations set forth in this subpart. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the seed cotton pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such seed cotton, after execution of the note and security agreement by CCC.

(e) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC if a producer makes any fraudulent representation in obtaining a loan or in maintaining or settling a loan or disposing of or moving the collateral without the prior approval of CCC. Accordingly, if CCC or the county committee determines that the producer has violated the terms or conditions of the note and security agreement, liquidated damages shall be assessed on

the quantity of the seed cotton which is involved in the violation. If CCC or the county committee determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note for the first offense;

(ii) 25 percent of the loan rate applicable to the loan note for the second offense; or

(2) Did not act in good faith with regard to the violation, or for cases other than first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note.

(f) For first and second offenses, if CCC or the county committee determines that a producer acted in good faith when the violation occurred, the county committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity affected by the violation, and charges plus interest applicable to the amount repaid;

(2) Assess liquidated damages in accordance with paragraph (e); and

(3) If the producer fails to pay such amount within 30 calendar days from the date of notification, call the applicable loan involved in the violation.

(g) For cases other than first or second offenses, or any offense for which CCC or the county committee cannot determine good faith when the violation occurred, the county committee shall:

(1) Assess liquidated damages in accordance with paragraph (e);

(2) Call the applicable loan involved in the violation.

(h) If CCC or the county committee determines that the producer has committed a violation in accordance with paragraph (e), the county committee shall notify the producer in writing that:

(1) The producer has 30 calendar days to provide evidence and information to the county committee regarding the circumstances which caused the violation, and

(2) Administrative actions will be taken in accordance with paragraphs (f) or (g).

(i) Any or all of the liquidated damages assessed in accordance with the provision of paragraph (e) may be waived as determined by CCC.

Subpart E—Standards for Approval of Warehouses for Cotton and Cotton Linters

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

SOURCE: 44 FR 67085, Nov. 23, 1979, unless otherwise noted.

§ 1427.1081 General statement and administration.

(a) This subpart prescribes the requirements which must be met and the procedures which must be followed by a warehouseman in the United States or Puerto Rico who desires the approval by the Commodity Credit Corporation (hereinafter referred to as "CCC") of warehouse(s) for the storage and handling of cotton and cotton linters, under a Cotton Storage Agreement, which are owned by CCC or held by CCC as security for price support loans. This subpart is not applicable to cotton or cotton linters purchased in storage for prompt shipment or to handling operations of a temporary nature.

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

(c) A warehouse must be approved by the KCCO and a storage agreement must be in effect between CCC and the warehouseman before CCC will use such warehouse. The approval of a warehouse or the entering into of a storage agreement does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make any such commitment.

(d) A warehouseman, when applying for approval under this subpart shall submit to CCC at KCCO:

(1) A completed Form CCC-49, "Application for Approval of Warehouse for Storage of Cotton and/or Cotton Linters,"

(2) A current financial statement on Form WA-51, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form WA-51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

(3) Evidence that the warehouseman is licensed by the appropriate licensing authority as required under § 1427.1082(a)(2) and such other documents or information as CCC may require,

(4) For warehouseman not operating under the U.S. Warehouse Act, a sample copy of the warehouseman's receipts and bale tags, and

(5) Evidence of applicable fire insurance rates.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16454, Apr. 26, 1985]

§ 1427.1082 Basic standards.

Unless otherwise provided in this subpart, each warehouseman and each of the warehouses owned or operated by such warehouseman for which CCC approval is sought for the storage or

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handling of CCC-owned or -loan commodities shall meet the following standards:

(a) The warehouseman shall:

(1) Be an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity. The warehouseman, if a corporation, shall be authorized by its charter to engage in such business,

(2) Have a current and valid license for the kind of storage operation for which the warehouseman seeks approval if such a license is required by State or local laws or regulations,

(3) Have a net worth which is the greater of \$25,000 or the amount which results from multiplying the maximum storage capacity of the warehouse (the total number of bales of cotton or cotton linters which the warehouse can accommodate when stored in the customary manner) times ten (10) dollars per bale. The net worth need not exceed \$250,000. If the calculated net worth exceeds \$25,000, the warehouseman may satisfy any deficiency in net worth between the \$25,000 minimum requirement and such calculated net worth by furnishing bond (or acceptable substitute security) meeting the requirements of § 1427.1083,

(4) Have available sufficient funds to meet ordinary operating expenses,

(5) Have satisfactorily corrected, upon request by CCC, any deficiencies in the performance of any storage agreement with CCC,

(6) Maintain accurate and complete inventory and operating records,

(7) Use only card type warehouse receipts which are pre-numbered and pre-punched or such other document as CCC may prescribe,

(8) Have available at the warehouse adequate and operable firefighting equipment for the type of warehouse and applicable stored commodity, and

(9) Have a work force and equipment available to provide adequate storage and handling service.

(b) The warehouseman, officials, or supervisory employees of the warehouseman in charge of the warehouse operation shall have the necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable com-

modities to enable them to provide proper storage and handling services.

(c) Warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse operation shall:

(1) Have a satisfactory record of integrity, judgment, and performance, and

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) The warehouse shall:

(1) Be of sound construction, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity,

(2) Be under the control of the contracting warehouseman at all times, and

(3) Not be subject to greater than normal risk of fire, flood, or other hazards.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1083 Bonding requirements for net worth.

A bond furnished by a warehouseman under this subpart must meet the following requirements:

(a) Such bond shall be executed by a surety which:

(1) Has been approved by the U.S. Treasury Department, and

(2) Maintains an officer or representative authorized to accept service of legal process and in the State where the warehouse is located.

(b) Such bond shall be on Form CCC-33, "Warehouseman's Bond", except that a bond furnished under State law (statutory bond) or under operational rules of nongovernmental supervisory agencies may be accepted in an equivalent amount as a substitute for a bond running directly to CCC if:

(1) CCC determines that such bond provides adequate protection to CCC.

(2) It has been executed by a surety specified in paragraph (a) of this section or has a blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond, and

(3) It is noncancellable for not less than ninety (90) days or includes a rider providing for not less than ninety (90) days' notice to CCC before cancellation. Excess coverage on a substitute bond for one warehouse will not be accepted or applied by CCC against insufficient bond coverage on other warehouses.

(c) Cash and negotiable securities offered by a warehouseman may be accepted by CCC in lieu of the equivalent amount of required bond coverage. Any such cash or negotiable securities accepted by CCC will be returned to the warehouseman when the period for which coverage was required has ended and there appears to CCC to be no liability under the storage agreement.

(d) A legal liability insurance policy may be accepted by CCC in lieu of the required amount of bond coverage provided such policy contains a clause or rider making the policy payable to CCC. CCC determines that it affords protection equivalent to a bond, and the Office of the General Counsel, U.S. Department of Agriculture, approves it for legal sufficiency.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC-33A, "Irrevocable Letter of Credit", or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1084 Examination of warehouses.

Except as otherwise provided in this subpart, a warehouse must be examined by a person designated by CCC before it may be approved by CCC for the storage and handling of the commodity and periodically thereafter to determine its compliance with CCC's standards and requirements.

§ 1427.1085 Exceptions.

Notwithstanding any other provisions of this report:

(a) The financial bond and original and periodic warehouse examination

provisions of this subpart do not apply to any warehouseman approved or applying for approval for the storage and handling of cotton or cotton linters under CCC programs if the warehouse is licensed under the U.S. Warehouse Act for such commodity but a special examination shall be made of such warehouse whenever CCC determines such action is necessary.

(b) A warehouseman who has a net worth of at least \$25,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity,

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

[44 FR 67085, Nov. 23, 1979, as amended by Amdt. 3, 50 FR 16455, Apr. 26, 1985; 56 FR 11502, Mar. 19, 1991]

§ 1427.1086 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval to the warehouseman. This notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

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(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1427.1082, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination of whether to approve the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Farm Service Agency (hereinafter referred to as "FSA"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the FSA regulations governing appeals, 7 CFR part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1427.1082(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985]

§ 1427.1087 Exemption from requirements.

(a) If warehousing services in any area cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.

(b) Warehousemen who are currently under contract with CCC will be required to meet the terms and condi-

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tions of these regulations at the time of renewal of their contract.

[44 FR 67085, Nov. 23, 1979, as amended at 44 FR 74797, Dec. 18, 1979]

§ 1427.1088 Contract fees.

(a) Each warehouseman who has a non-federally licensed cotton warehouse must pay an annual contract fee for each such warehouse for which the warehouseman requests renewal of an existing Cotton Storage Agreement or approval of a new Cotton Storage Agreement as follows:

(1) A warehouseman who has an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral must pay an annual contract fee for each warehouse approved under such agreement in advance of the renewal date of such agreement.

(2) A warehouseman who does not have an existing Cotton Storage Agreement with CCC for the storage and handling of CCC-owned cotton or cotton pledged to CCC as loan collateral but who desires such an agreement must pay a contract fee for each warehouse for which CCC approval is sought prior to the time that the agreement is approved by CCC.

(b) The amount of the contract fee shall be determined and announced annually in the FEDERAL REGISTER.

[Amdt. 4, 50 FR 36569, Sept. 9, 1985]

§ 1427.1089 OMB Control Numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR part 1427) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0040, 0560-0074, 0560-0027, and 0560-0059.

[Amdt. 3, 50 FR 16455, Apr. 26, 1985. Redesignated by Amdt. 4, 50 FR 36569, Sept. 9, 1985]

PART 1430—DAIRY PRODUCTS

Subpart A—Price Support Program for Milk

Sec.

1430.1 Definitions.